

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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BARRY LINTON,	:	
	:	
Plaintiff	:	
	:	
v.	:	C.A. No. 04-11362-RWZ
	:	
NEW YORK LIFE INSURANCE AND ANNUITY	:	
CORPORATION,	:	
	:	
Defendant.	:	

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**RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY**

In response to Plaintiff's Notice of Supplemental Authority, Defendant New York Life Insurance and Annuity Corporation ("New York Life") respectfully states that the opinion set forth in *Prusky v. Reliastar Life Ins. Co.*, No. 05-1611, 2006 U.S. App. LEXIS 6864, at \*1 (3d Cir. Mar. 20, 2006), should have no impact on the issues that are before this Court, for the following reasons:

1. Neither party relied on the Eastern District of Pennsylvania's opinion in *Prusky v. Reliastar Life Ins. Co.*, No. 03-cv-06196, 2004 U.S. Dist. LEXIS 24802 (E.D. Pa. Dec. 7, 2004) in any of their summary judgment papers, though decisions in other cases in which the same plaintiff appears were cited. From this it appears that both parties appreciated that the factual and legal circumstances presented in *Prusky v. Reliastar* are substantially different from the facts presented in this case;

2. The investors in *Prusky v. Reliastar* negotiated a specific written agreement with defendant Reliastar allowing them to make daily transfers by telephone. 2006 U.S. App. LEXIS 6864 at \* 6. In the case at hand, in stark contrast, there is no specific written

provision in Policy granting Mr. Linton the right to make daily transfers by telephone or any means other than “a notice you sign.”

Respectfully submitted,

NEW YORK LIFE INSURANCE AND  
ANNUITY CORPORATION

By its attorneys,

/s/ Robert G. Jones

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Dated: April 28, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that on April 28, 2006, Defendant's Response to Notice of Supplemental Authority was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on April 13, 2006.

/s/ Robert G. Jones

Robert G. Jones